

**TERMS FOR INSTALLATION AND MIGRATION FROM IBM MOBILE FIRST
TO PERSISTENT MOBILE FOUNDATION**

BY AVAILING PERSISTENT SYSTEM LIMITED's ("PERSISTENT" OR "PSL") SERVICES, YOU SIGNIFY ASSENT TO THE TERMS OF THIS AGREEMENT ("AGREEMENT"). IF YOU ARE ACTING ON BEHALF OF AN ENTITY, THEN YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN YOU WOULD NOT BE ABLE TO AVAIL PERSISTENT SERVICES FOR INSTALLATION AND MIGRATION OF PERSISTENT MOBILE FOUNDATION ("PMF") FROM IBM MOBILEFIRST.

This is an Agreement between Persistent Systems limited. ("PSL") and the individual or entity which purchased Persistent Mobile Foundation Professional Services from IBM Cloud Catalog ("You" or "you").

1. **Deliverables:** PSL will provide implementation services in two phases: Phase 1 involves installing the PMF phase on the target environment, and Phase 2 includes migrating mobile apps, adaptors, and the database from the IBM MobileFirst production environment to the PMF production environment.
2. **General Pre-requisite:** These services will be provided once the required information is confirmed by you and or IBM Cloud, including the necessary pre-requisite software and server for PMF installation to the required version such as Red Hat Open shift and Load Balancer. Additionally, the development and pilot environment must be ready with required software, servers and cloud environments, including Red Hat Open shift and network connectivity. Deployment documentation of the existing IBM MobileFirst environments and customizations must also be provided, along with a Virtual Private Network (VPN) connection or remote access to the existing IBM MobileFirst environments and IBM Cloud environments. Network firewall and/or reverse proxy configurations, Single Sign-On (SSO) setup, and required network ports must be opened for all implementation work. PSL shall share the project scope, key milestones, and the project plan, and get commitments from the project stakeholders. You shall ensure that all the stakeholders responsible and impacted by the project will participate in the Kick-off review, understand and agree to the project scope, key milestones, project plan and project deliveries shared by PSL.
3. **PSL and Your Responsibilities:** PSL is responsible for performing the environment checks on the target environment, performing the PMF component installation, and preparing the User Acceptance Test Case. You are responsible for ensuring the target environment is ready and network connectivity is established. You must provide PSL with access to your network to perform installation and configuration activities and provide VPN connectivity to the target environment for PSL personnel. You are also responsible for provisioning or installing any third-party software or hardware, such as a load balancer or firewall, that is required. Additionally, You must provide timely responses to hardware and network issues throughout the installation activities, provide contact points to answer PSL questions regarding the installation activity, and provide PSL with all required information to proceed with the Services work. Installation will be performed remotely through VPN or remote connections provided by You.
4. **Limitation:** The following activities are out-of-scope for services activities:
 - Any product development work.
 - Fixing of any legacy issues.
 - Any product technical training is out of scope.
 - Provision or installation of any hardware equipment, maintenance or warranty.
 - Provision of any 3rd party software, installation, maintenance or warranty.
 - Any system administration and support, system backup, system restore, upgrades and implementation.
 - Any additional deployment scope or activities apart from what is stated in this Agreement.
 - Any support for force majeure events, third party actions, or any events beyond PSL's reasonable control.
5. **Your Obligations:** PSL's performance depends on the following responsibilities being fulfilled by You. If these responsibilities are not met, there may be schedule and price changes. You must designate a single point of contact for this service, to whom PSL communications can be addressed, who will serve

as the interface between PSL, Your department and any third-party vendors/subcontractors participating in this Services on any technical decisions, information gathering, broadcasting and change of control; who has the authority to act for You in all aspects of this Services; and who has the responsibility of managing the operations environment after the completion of these Services. You must provide the necessary operating environment for all equipment delivered, in accordance with the equipment manufacturer's specifications, ensure any pre-requisite hardware and operating system and related software are installed and operational at the required version and maintenance levels, except for those pre-requisites that have been stated to be provided and installed by PSL in this Agreement. You must assist in obtaining the security clearance and network connection, if needed, for the PSL staff to enter the workspace and access the necessary network or data, be responsible for implementing appropriate safeguards for all data, and prepare all pre-requisites mentioned in the Services.

6. **Fees:** The unit price fees quoted is for 2 personnel.
7. **Change Control:** The following procedure would be adopted for any changes identified by PSL or You at any stage of the project. Change Requests may be initiated due to any of the following conditions (with respect to the requirements sent by You)
 - Execution of a newly identified feature or integration task.
 - Scope changes in already identified tasks.
 - Any changes in the deployment or testing environment.The change identified has to be documented and communicated between You and PSL in the form of a written document such as e-mail. Verbally communicated changes must be followed by a written (e-mail) request.
The change would be evaluated for its impact on the project schedules & cost estimates and communicated to You. All changes would have to be approved by Your management, before they are taken up for implementation. PSL would proceed with the changes, which might impact schedules, after approval from You.
8. **Additional Terms:** In case any open-source software or third-party proprietary software ("Additional Software") is used for providing Services under this Agreement, such Additional Software shall be governed by its own license terms and conditions and PSL shall have no liability for such Additional Software.
9. **Mutual Representation and Warranty:** You represent and warrant that You have the valid licenses for PMF provided by PSL and that You will comply with the terms of such licenses.
10. **Location of Services:** PSL will provide Services from its offices in India.
11. **Approval Process:** Within seven (7) calendar days following receipt of the deliverable ("Deliverable"), You shall complete acceptance tests in accordance with the agreed upon acceptance criteria and plan from time to time. The standard of review of the Deliverable(s) shall be material conformance with the agreed specifications. By the expiration of review period, You will submit a written statement ("Deliverable Review Statement") to PSL indicating acceptance of the Deliverable(s) ("Acceptance") or specifying in detail how the submitted Deliverable(s) fails to materially conform to the agreed specification. PSL shall correct such non-conformance within the timelines as agreed between the parties but not less than 30 days. If You fail to provide the Deliverable Review Statement indicating acceptance or nonconformance within seven (7) days or when You use the Deliverable in its business, whichever occurs first, the Deliverables shall be deemed to be accepted by You.

12. **Services and/or Deliverables:** You shall own all right, title and interest in and to the Deliverables upon receipt of full payment by PSL. Notwithstanding anything herein to the contrary, You shall retain all right, title and interest in and to Your Pre-Existing IP. "Your Pre-Existing IP" shall mean all pre-existing information, data, software, tools and other materials developed by or for You, prior to commencement of the Services. You grant to PSL a non-exclusive, worldwide, royalty-free license to use Your Pre-Existing IP solely for Deliverables and/or Services. You warrant that the work specifications, data, information, material provided by You or any Your Pre-existing IP do not infringe third party intellectual property rights. Notwithstanding anything contained to the contrary, PSL shall retain all right, title and interest in and to PSL Pre-Existing IP and its customizations, modifications, upgrades and updates. "PSL Pre-Existing IP" shall mean all pre-existing information, data, software, tools and other materials developed by or for PSL prior to commencement of the Services or developed by or for the PSL independently outside the scope of the Services.

PSL shall not be responsible for matters relating to or arising from:

- (a) Modification or combination of Services/Deliverables with any hardware, software, data, or other materials not approved by PSL;
 - (b) Your failure to comply with the instructions or requirements specified in documentation provided by PSL;
 - (c) PSL's compliance with Your specifications, design or requirements with respect to Services/Deliverables;
 - (d) Your use or deployment of Services or Deliverables for any illegal or unlawful or unauthorized purpose;
13. **Confidentiality:** Confidential information shall mean any information disclosed by one party ("Disclosing Party") to the other party ("Receiving Party"), in any form including without limitation documents, business plans, source code, software, technical/ financial/ marketing/ customer/ business information, specifications, analysis, designs, drawings, data, computer programs, any information relating to personnel or Affiliates of a party and include information disclosed by third parties at the direction of a Disclosing Party and marked as confidential within 15 days of such disclosure. Confidential Information shall however, exclude any information which (i) is/ was publicly known or comes into public domain; (ii) is received by the Receiving Party from a third party, without breach of this Agreement; (iii) was already in the possession of Receiving Party, without confidentiality restrictions, at the time of disclosure by the Disclosing Party; (iv) is permitted for disclosure by the Disclosing Party in writing; (v) independently developed by the Receiving Party without use of Confidential Information; (vi) is required to be disclosed by the Receiving Party pursuant to any order or requirement from court, administrative or governmental agency, provided that the Receiving Party shall give the Disclosing Party prompt written notice of such order or requirement and an opportunity to contest or seek an appropriate protective order. The Receiving Party agrees not to use any Confidential Information for any purpose except for conducting business with the Disclosing Party, or otherwise agreed in writing. The confidentiality obligations outlined herein shall survive for a period of two (2) years from the termination or expiration of this Agreement.

14. **Warranties:** SERVICES SHALL BE PROVIDED ON "AS IS" BASIS. PSL DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR IN ANY COMMUNICATION BETWEEN THEM, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE.

15. **Limitation of Liability:** IN NO EVENT SHALL PSL LIABILITIES ARISING UNDER THIS AGREEMENT (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) EXCEED THE AGGREGATE FEES PAID TO PSL FOR THE SERVICES RENDERED UNDER THIS AGREEMENT. FOR THE AVOIDANCE OF DOUBT, THIS LIABILITY CAP IS AN AGGREGATE LIABILITY FOR THE AGREEMENT, ALL SUPPLEMENTS, ALL COMPANION AGREEMENTS AND THE INCIDENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT THE FOREGOING LIMITATIONS OF LIABILITY WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY OR REMEDY HEREIN.

THE PARTIES DISCLAIM ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES OR LOSS OF REVENUE OR BUSINESS PROFITS, HOWEVER CAUSED, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR DAMAGES RELATING TO ANY CLAIM THAT ACCRUED MORE THAN TWO YEARS BEFORE THE INSTITUTION OF ADVERSARIAL PROCEEDINGS THEREON.

16. **Termination:** Either party may terminate this Agreement with thirty (30) days prior written notice. Either party may terminate this Agreement immediately if the other party breaches the terms of this Agreement and the breach remains uncured for 30 days from the date of receipt of notice.

Upon termination of this Agreement for any reason, PSL shall be paid Fees or expenses or both up to the effective date of the termination.

17. **Non-Solicitation:** During the term of this Agreement and for one (1) year thereafter, You will not directly or indirectly recruit, solicit or induce any personnel, consultant or advisor of the PSL to terminate his or her relationship with the PSL. You shall not directly or indirectly recruit former personnel of the PSL without the prior written consent of the PSL, where former personnel shall mean a person who ceases to work for the PSL and a period less than one year has since elapsed.

18. **Force Majeure:** Neither party shall be liable for any failure or delay in fulfilling the terms of this Agreement due to fire, strike, war, civil unrest, terrorist action, government regulations, act of Nature or other causes which are unavoidable and beyond the reasonable control of the party claiming force majeure ("Force Majeure event"). This provision shall not be construed as relieving either party from its obligation to pay any sum due to the other party. In case of Force Majeure event, parties shall mutually discuss and agree in writing (e-mail acceptable) the alternative working methods, including work from home option for the employees, to continue providing the Services.

19. **Governing Law and Dispute Resolution:** The terms of this Agreement shall be governed, interpreted and construed in accordance with the laws of State of California without regard to principles of conflict of laws. The parties submit to the exclusive jurisdiction of the courts of State of California. The parties agree to negotiate in good faith to resolve any dispute between them regarding this Agreement. If the disputes cannot be resolved by such representatives in such meeting, the parties shall conduct arbitration in Santa Clara, California, in accordance with the rules of JAMS ("**Rules**").

20. **Entire Agreement:** This Agreement shall constitute the complete agreement between the parties respecting the subject matter. This Agreement may not be extended, amended, terminated, or superseded except by agreement in writing between the parties. This Agreement supersedes all previous agreements between the PSL and You, whether oral or written, regarding subject matter hereof, Standard terms and conditions of a purchase order or an invoice or any similar document, whether hosted on party's website or otherwise, shall be ineffective. There are no intended third-party beneficiaries to this Agreement.